IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO. 67 OF 2001

Maharashta State Financial
Corporation. .... Petitioner.

vs.

Jayant P. Patil
& Ors. .... Respondents.

Mr. M.P. Rege for petitioner.
Mr. C.G. Ghavanekar with G. Hiranandani
for Respondent.

CORAM : S.U.KAMDAR, J.
DATE : 15th MARCH, 2005.

P.C.

. The present petition is filed under section 31 (1) (aa) of State Financial Corporations Act, 1951. The present petition is based against the respondent who was a guarantor.

2. The respondent no. 5 company sought a loan of a sum of Rs. 5 lacs out of which 4.44 lacs were disbursed by the petitioner to the respondent on 1.9.1989. To secure the said loan amount,

respondent nos. 1 to 4 have executed personal guarantee. There were also mortgage and hypothecation of various assets of respondent no. 5 company. Under the terms and conditions of the said sanction of the loan, the interest was payable at the rate of 13.5% per annum. The company has committed default in making payment and in exercise of power under section 29 of the State Financial Corporations Act the petitioner took over the mortgaged property and subsequently sold the same on 18.2.1998 for total consideration of Rs. 2.75 lacs. For the balance amount, the petitioner invoked the guarantee against the respondent nos. 1 to 4 and by a notice dated 29.2.2000 the said bank guarantee was revoked and the amount was claimed from the respondent nos. 1 to 4 as the guarantors in respect of the said claim of respondent no. 5. Since the respondent nos. 1 to 4 failed to make payment, the present petition is filed seeking to recover 19,57,860.10 as set out in the particulars of claim in the present petition. The petitioners have also filed a further affidavit in view of the judgment of the Apex Court reported in (2002) 1 SCC page 367 and have given upto date statement of account as on 20.1.2005. There is a claim outstanding of the petitioner for Rs.19,50,574.10 along with further interest at the rate of 13.5 % per annum thereon with quarterly rests.

3. The respondent nos. 1 to 4 have resisted the said claim by raising a defence of limitation. It is the case of respondent nos. 1 to 4 that the default by the respondent no. 5 company has been effected sometime in 1991 whereas the guarantee given by respondent nos. 1 to 4 is invoked only on 25.2.2002 and the assets are sold as late as on 18.2.1998. In view of the judgment of this Court in the case of Maharashtra State Financial Corporation vs. Magna Elastomeric Rollers Pvt. Ltd., & Ors. delivered on 28.2.2005 in Misc. Petition No. 49 of 1999, I do not find any substance in the issue of limitation. In my opinion, the cause of action arises only from the date of invocation of the guarantee as against respondent nos. 1 to 4 and the claim, if any, against the respondent nos. 1 to 4 crystalises only after the assets are sold of the respondent no. 5 company. In that view of the matter, I find no merit in the defence raised by respondent nos. 1 to 4. The same is rejected.

4. In light of the above, I pass the following order :-

> The respondent nos. 1 to 4 are directed to pay a sum of Rs. 19,50,574.10 with further interest at the rate of 13.5 % per annum from 25.1.2005 till payment and/or realisation and the respondent nos. 1 to 4

also should pay the costs of the present petition. Petition is thus made absolute accordingly with costs.